

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIANO OFEMIANO ALIAS MANING, ACCUSED-APPELLANT.

G.R. No. 187155. February 01, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an appeal from the November 10, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01356 entitled *People of the Philippines v. Mariano Ofemiano* which affirmed the July 17, 2000 Decision[2] in Criminal Case No. 9659-B of the Regional Trial Court (RTC), Branch 25 in Biñan, Laguna. The RTC convicted accused-appellant Mariano Ofemiano of rape.

The Facts

AAA[3] is BBB's eldest daughter. When BBB separated from her husband, she left her three children in the care of her mother in Bicol province. In March 1995, however, BBB fetched AAA[4] and brought her to Caloocan City to live with her and her lover, accused-appellant Mariano Ofemiano, and their children.[5]

On the very night of AAA's arrival in Caloocan City, Ofemiano sexually molested her. At around midnight, while asleep with her half brothers and mother, AAA was awakened by the weight pressing on her body and saw that Ofemiano was already on top of her. AAA struggled by pushing Ofemiano but he was able to hold her arms. He then removed her shorts and panty and proceeded to have sexual intercourse with her. She tried to awaken her mother but she could not be roused.[6]

The sexual molestations continued almost everyday thereafter. AAA revealed to her mother her harrowing experience but the latter dismissed her report.[7]

In January 1996, the family transferred to Sinaloan, Laguna, and then in July 1996 to Biñan, Laguna. Just three days after their transfer, while everyone else was asleep, Ofemiano crept on top of AAA and pressed his body on her. He then removed her underwear and pumped his penis into her vagina. To prevent AAA from screaming, Ofemiano covered her mouth with his hand and threatened to kill her if she divulged to anyone what he had done.[8]

Afraid of Ofemiano's threats, and not finding solace from her mother, AAA just kept quiet. But in September 1996, AAA visited her aunt in Landayan, San Pedro, Laguna and found the courage to tell the latter about her ordeal. Enraged, her aunt immediately reported the matter to the authorities.[9]

On September 18, 1996, AAA underwent a medical examination. Municipal Health Officer Dr. Lolita Macaraig found that AAA's genitals had several old healed lacerations, which could have been caused by a penetration of a hard object or by sexual intercourse.[10]

Thereafter, on February 7, 1997, an Information for rape was filed against Ofemiano. The Information reads:

That sometime in July, 1996, in the municipality of Biñan, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused MARIANO OFEMIANO ALIAS "MANING", prompted with lewd design and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a thirteen (13) years old minor, against her will and consent, to her damage and prejudice.

Contrary to law.[11]

During trial, Ofemiano denied the charges against him. He claimed that AAA's grandmother concocted the imputation against him because she was angry at him for cohabiting with her daughter, BBB. He also insinuated that BBB's former lover had instigated the false charges against him because he was jealous of him.[12]

BBB corroborated Ofemiano's testimony.

In a Decision dated July 17, 2000, the RTC convicted Ofemiano of the crime of simple rape. The dispositive part of the Decision reads:

WHEREFORE, in the light of all the foregoing considerations, the Court hereby finds accused MARIANO OFEMIANO alias "MANING" GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized under Art. 335 of the Revised Penal Code, and accordingly he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

Furthermore, aforesaid accused is hereby ordered to indemnify complainant [AAA] the following sums:

- a) [PhP] 75,000.00 - compensatory damages;
- b) [PhP] 50,000.00 - moral damages;
- c) [PhP] 25,000.00 - exemplary damages; and
- d) to pay the costs of suit.

x x x x

SO ORDERED.[13]

The case was appealed to the CA.

The Ruling of the CA

Affirming the credibility of the complaining witness, the CA held that there was nothing in the victim's testimony that would render her statements improbable. The appellate court noted that Ofemiano used his parental authority over the victim in order to coerce her to submit to his sexual desires. It also observed that the lack of support from the victim's mother contributed to the victim's sense of helplessness and resignation.

The CA then held that the inconsistencies in the victim's statements--on the dates when the rape took place--were immaterial to the gravamen of the offense and, thus, have no effect on the victim's credibility.

The CA, however, modified the award of civil indemnity. It reduced the trial court's award of civil indemnity from PhP 75,000 to PhP 50,000 in the absence of evidence proving a larger amount.

Hence, we have this appeal.

The Issues

In a Resolution dated March 30, 2009, this Court required the parties to submit supplemental briefs if they so desired. On June 10, 2009, accused-appellant, through counsel, signified that he would no longer file a supplemental brief. The issue raised in accused-appellant's Brief dated July 16, 2003 is now deemed adopted in

this present appeal, thus:

I

The Court a quo gravely erred in giving full weight and credence to the incredible and inconsistent testimony of the private complainant.

II

The Court a quo gravely erred in convicting the accused-appellant of the crime of rape despite the failure of the prosecution to prove his guilt beyond reasonable doubt.[14]

The Ruling of the Court

The appeal is without merit.

Accused-appellant attacks the credibility of the complaining witness by alleging that the latter's testimony is replete with improbabilities. He claims that it was unlikely that the complaining witness did not struggle to free herself or scream for help, considering that her mother and siblings were sleeping beside her and could easily be awakened. Likewise, accused-appellant questions the fact that the complaining witness could not remember the dates when the sexual molestations occurred.

We are not convinced.

It is hornbook doctrine that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect. Having seen and heard the witnesses and observed their behavior and manner of testifying, the trial court is deemed to have been in a better position to weigh the evidence.[15] Thus, the trial court's evaluation shall be binding on the appellate court unless it is shown that certain facts of substance and value have been plainly overlooked, misunderstood, or misapplied.[16] None of the exceptions is present in this case.

Jurisprudence holds that the failure of the victim to shout for help does not negate rape.[17] Even the victim's lack of resistance, especially when intimidated by the offender into submission, does not signify voluntariness or consent.[18] In *People v. Corpuz*,[19] we acknowledged that even absent any actual force or intimidation, rape may be committed if the malefactor has moral ascendancy over the victim. We emphasized that in rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, moral influence or ascendancy substitutes for violence or intimidation.[20]

Thus, in this case, it was understandable for the victim to have silently endured the sexual attacks of her mother's live-in partner. As correctly observed by the appellate court, accused-appellant evidently used his moral ascendancy over the victim to carry out his bestial desire. The CA wrote:

x x x Although unmarried, the accused and the girl's mother were living together as husband and wife, and it was to a household where the accused wielded the patriarchal authority that she was brought. It was not unlikely that the girl had come to his words in a manner that would not exist if they were not living under the same roof. The power of the father-figure is not uncommon in rural households where families are large and cramped into living conditions without the elemental decency and privacy that growing children need. While the offended party might have initially resisted the sexual advances of the accused, the fact that the mother refused to interfere with the actuations of her live-in partner must have contributed to the sense of helplessness and resignation of the girl. She had nowhere else to go and could certainly not have survived by herself. It is not surprising that she ultimately endured her ordeal in silence.[21]

Moreover, it is of no moment that the rape occurred in a small room where other people were sleeping together

with the victim. It is already established that rape is not a respecter of people, time, or place.[22] It may be committed not only in seclusion but also in public places, inside an occupied house, or even where there are other people around.[23] The Court has already taken judicial notice of the fact that among poor couples with big families cramped in small quarters, copulation does not seem to be a problem despite the presence of other persons.[24]

Notably, the victim sufficiently explained that accused-appellant prevented her from screaming by covering her mouth with his hand and by his constant threat of harm on her family.

Also, the victim's inability to remember the exact dates of the rape should not be taken against her. The exact time of the commission of the crime of rape is not a material ingredient of this crime. In this case, the victim was raped almost every night for a year by her mother's live-in partner, with her mother turning a deaf ear to her cries for help. Under these circumstances, we could not expect the victim to recall her harrowing experiences in an exact, detailed, and flawless testimony. Verily, as in this case, it is sufficient if the acts complained of are alleged to have taken place as near to the actual date at which the offenses are committed as the information or complaint will permit.[25]

Upholding the victim's credibility, we accordingly sustain accused-appellant's conviction.

To sustain a conviction for rape, there must be proof of the penetration of the female organ.[26] The testimony of the victim established how accused-appellant repeatedly ravished her. She described with clarity how he undressed her and succeeded in forcing himself on her. On cross examination, the victim maintained her account of the rape and never once faltered in her declaration that accused-appellant sexually molested her. Supporting her claim is the medico-legal finding that she has old healed hymenal lacerations. As established by jurisprudence, when the victim's straightforward testimony is consistent with the physical finding of penetration, sufficient basis exists for concluding that that sexual intercourse did take place.[27]

As regards the award of damages, the appellate court correctly reduced the award of civil indemnity from PhP 75,000 to PhP 50,000 in favor of the victim. In cases of simple rape, civil indemnity of PhP 50,000 is automatically awarded without need of pleading or proof.[28] The award of moral and exemplary damages was also in order. We, however, increase the award of exemplary damages to PhP 30,000 following current jurisprudence on the matter.[29]

WHEREFORE, the Court AFFIRMS the CA's November 10, 2008 Decision in CA-G.R. CR-H.C. No. 01356 with MODIFICATION. As modified, the dispositive portion of the affirmed July 17, 2000 Decision of the RTC shall read:

WHEREFORE, in the light of all the foregoing considerations, the Court hereby finds accused MARIANO OFEMIANO alias "MANING" GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized under Art. 335 of the Revised Penal Code, and accordingly he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

Furthermore, aforesaid accused is hereby ordered to indemnify complainant the following sums:

- a) PhP 50,000 - civil indemnity;
- b) PhP 50,000 - moral damages;
- c) PhP 30,000 - exemplary damages; and
- d) to pay the costs of suit.

SO ORDERED.

Carpio (Chairperson), Corona[*], Brion, and Perez, JJ., concur.

[*] Additional member per Special Order No. 818 dated January 18, 2010.

[1] Rollo, pp. 4-12. Penned by Associate Justice Mario Guariña III and concurred in by Associate Justices Celia Librea-Leagogo and Arturo Tayag.

[2] CA rollo, pp. 17-24. Penned by Judge Hilario F. Corcuera.

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, and that of her immediate family members, is withheld and fictitious initials instead are used to represent her in order to protect her privacy.

[4] The trial and appellate courts failed to establish the exact age of the victim as the latter had no birth record; and the victim's mother could not remember exactly when she gave birth to the victim. See rollo, p. 4.

[5] CA rollo, p. 18.

[6] Id. at 19.

[7] Id.

[8] Rollo, p. 6.

[9] Id.

[10] Id.

[11] CA rollo, p. 8.

[12] Id. at 20.

[13] Id. at 24.

[14] Id. at 74. Original in capital letters.

[15] *People v. Padilla*, G.R. No. 167955, September 30, 2009; *People v. Tuazon*, G.R. No. 168102, August 22, 2008, 563 SCRA 124, 132.

[16] *People v. Suyat*, G.R. No. 173484, March 20, 2007, 518 SCRA 582, 591; *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 658.

[17] See *People v. Diocado*, G.R. No. 170567, November 14, 2008, 571 SCRA 123; *People v. Arraz*, G.R. No. 183696, October 24, 2008, 570 SCRA 136; *People v. Opeliña*, G.R. No. 142751, September 30, 2003, 412 SCRA 343; *People v. Regala*, G.R. No. 140995, August 30, 2001, 364 SCRA 134.

[18] *People v. Del Castillo*, G.R. No. 180925, August 20, 2008, 562 SCRA 752, 759-760.

[19] G.R. No. 175836, January 30, 2009, 577 SCRA 465.

[20] Id. at 473.

[21] Rollo, p. 9.

[22] *People v. Cariñaga*, G.R. Nos. 146097-98, August 26, 2003, 409 SCRA 337, 354.

- [23] *People v. Olaybar*, G.R. Nos. 150630-31, October 1, 2003, 412 SCRA 490, 501.
- [24] *People v. Anguac*, G.R. No. 176744, June 5, 2009; *People v. Flores*, G.R. Nos. 145309-10, April 4, 2003, 400 SCRA 677.
- [25] *People v. Jimenez*, G.R. No. 170235, April 24, 2009, 586 SCRA 580, 595.
- [26] *People v. Pandapatan*, G.R. No. 173050, April 13, 2007, 521 SCRA 304.
- [27] *People v. Malibiran*, G.R. No. 173471, March 17, 2009, 581 SCRA 655, 669; *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 448; *People v. Bañares*, G.R. No. 127491, May 28, 2004, 430 SCRA 435, 448.
- [28] *People v. Cruz*, G.R. No. 186129, August 4, 2009.
- [29] *People v. Pabol*, G.R. No. 187155, October 12, 2009.

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